IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3696 OF 2003
IN
SUMMARY SUIT NO.4766 OF 1997

Anjali S. Patankar ....Plaintiff
V/s.
Kamal M. Pethe & Ors. ....Defendants

Mr.S.S. Jinsiwalla i/b Mr.M.R. Palshikar for the Plaintiff.
Mr.A.G. Damle for Defendant Nos.1 to 4.
Mr.M.V. Upadhye for Defendant Nos.5 to 9.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH NOVEMBER, 2005.

P.C. :

1. This is a Notice of Motion taken out by Defendant Nos.5 to 9 to vacate the order dated 31st March, 2000 passed in the Notice of Motion No.2249 of 1998 by S.Radhakrishnan, J.

2. The Plaintiff is the daughter of the deceased one Madhukar Pethe. Defendant No.1 is the wife of the deceased. Defendant Nos.2, 3 and 4 are the sons of the deceased. Defendant Nos.5, 6 and 7 are the heirs of one Vinayak Pethe, who is a deceased brother of the deceased. Defendant Nos.8 and 9 are the brothers of the deceased. One Vasant Pethe, who is not a party to

the suit, is the deceased brother of the deceased. Vasant Pethe has also filed a suit for partition being Suit No.4971 of 1998. The Plaintiff has filed this suit in respect of her share in respect of the estate of the deceased. By the said order dated 31st March, 2000, the learned Judge recorded the statements made by learned counsel appearing on behalf of Defendant Nos.1, 3 and 4 that they would not create any third party right, title or interest in or part with possession of a flat being Flat No.5 in the building known as Rama Niwas, Ranade Road Extension, Shivaji Park, Dadar, Mumbai. Defendant Nos,1, 3 and 4 are in possession of the flat.

3. Defendant Nos.5 to 9 seek setting aside of the order on the ground that according to them, the shares of the parties are clear and that it is desirable that in view of the state of the building that the same be developed by some builder.

4. No concrete proposal for development and protection of the rights of the other parties has been made. Mr.Damle, the learned counsel appearing on behalf of Defendant Nos.1, 3 and 4 states that he desires to abide by the statement. There is no reason therefore at this stage to set-aside the order or

vacate the order dated 31st March, 2000. In the order dated 31st March, 2000 itself, it is stated that the main issue regarding the share of the parties can be decided at the time of final hearing of the suit.

5. The Notice of Motion is therefore dismissed. There shall be no order as to costs.